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MEMORANDUM

TO: Docket Control

FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

DATE: March 28, 2007

RE: IN THE MATTER OF THE APPLICATION OF NAVIGATOR
TELECOMMUNICATIONS, LLC. FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE RESOLD AND
FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS
SERVICES (DOCKET NO. T-20398A-06-0346)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Resold Local Exchange Services
- Facilities Based Local Exchange Services
- Access Services

Staff is recommending approval of the application.

EGJ:AFF:red

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

Arizona Corporation Commission

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SERVICE LIST FOR: Navigator Telecommunications, LLC
DOCKET NO. T-20398A-06-0346

Mr. Michael Hallam
Lewis and Roca, LLP
40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Christopher C. Kempley
Chief, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Lyn Farmer
Chief Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF NAVIGATOR TELECOMMUNICATIONS,
LLC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS
SERVICES.
(DOCKET NO. T-20398A-06-0346)

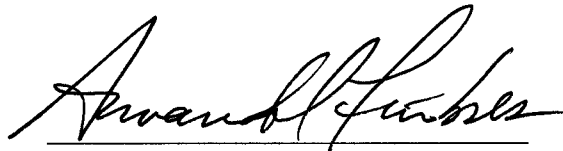
MARCH 28, 2007

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STAFF ACKNOWLEDGMENT

The Staff Report for Navigator Telecommunications, LLC (Docket No. T-20398A-06-0346) was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange and access services and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read "Armando Fimbres", written over a horizontal line.

Armando Fimbres
Public Utility Analyst V

1 INTRODUCTION

On May 25, 2006, Navigator Telecommunications, LLC ("Navigator" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold and facilities-based local exchange services within the State of Arizona.

On January 11, 2007, Navigator updated its application with the submission of A.C.C. Tariff No. 3 for Access Service.

On January 19, 2007, Navigator, filed revisions to A.C.C. Tariff No. 2 for Local Exchange Service, originally filed with its CC&N application.

In Decision No. 68928, dated August 29, 2006, the Commission granted Navigator a CC&N to provide resold long distance service in Arizona.

With this application, Navigator seeks to provide business local exchange and access services throughout the state of Arizona by utilizing the facilities of the incumbent ILEC (Qwest) in addition to the facilities of any available alternative providers. The Company states in its application that it "does not have nor currently have plans to deploy its own switch in Arizona but will utilize the switching facilities of other carriers."

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N for local exchange and access service. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2 TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Navigator states in its application that it is authorized to provide local exchange and access service in Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

Navigator has also been granted the authority to provide local exchange and access service in Colorado and Nevada since filing its application in Arizona.

Navigator also indicates that it is authorized to provide long distance services in 44 states and Washington, D.C.

Headquartered in North Little Rock, Arkansas, Navigator states that it has been providing telecommunications services since 1998. Based on its service history, Staff believes Navigator possesses the technical capabilities to provide the services it is requesting the authority to

provide.

3 FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided audited financial statements for the full years of 2002, 2003, 2004 and 2005. The most recent financial statements list assets of \$6,320,776; Members' Deficit of (\$11,138,609); and a net loss of (\$3,641,833). The Applicant did provide notes related to the financial statements.

The Applicant indicates in its proposed local exchange service tariff (section 1.8, page 5 and section 1.12, page 15) that it will not collect deposits, prepayments or advances from its local exchange customers.

Staff believes that Applicant's local exchange customers should be protected by the procurement of either a performance bond or an irrevocable sight draft Letter of Credit. Since the Applicant is requesting a CC&N for resold and facilities-based local exchange service and advances and deposits will not be collected, a limited bond or irrevocable sight draft Letter of Credit is appropriate. The amount of a performance bond or the irrevocable sight draft Letter of Credit for multiple services is an aggregate of the minimum bond or the irrevocable sight draft Letter of Credit amount for each type of telecommunications service requested by the Applicant. The amount of the performance bond or the irrevocable sight draft Letter of Credit coverage needed for each service is as follows: resold local exchange \$25,000 and facilities-based local exchange \$100,000.

Should Navigator seek in the future to collect advance payments or deposits, the bond or irrevocable sight draft Letter of Credit coverage should increase in increments equal to 50 percent of the total minimum bond amount when the total amount of the advances, deposits, and/or prepayments is within 10 percent of the total minimum bond amount. To that end, Staff recommends that the Applicant procure a performance bond or the irrevocable sight draft Letter of Credit equal to \$125,000. The minimum performance bond or the irrevocable sight draft Letter of Credit amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the irrevocable sight draft Letter of Credit amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the performance bond or the irrevocable sight draft Letter of Credit amount.

Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or the irrevocable sight draft Letter of Credit. Staff further recommends that the original

performance bond or the irrevocable sight draft Letter of Credit be sent directly to the Commission Business Office and that 14 copies be provided to Docket Control, simultaneously, within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further order of the Commission.

4 ESTABLISHING RATES AND CHARGES

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC") and various competitive local exchange carriers ("CLECs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Initially, Navigator will have a zero-value rate base and its projected fair value rate base will be zero at the end of the first twelve months of operation. The rate to be ultimately charged by the company will be heavily influenced by the market.

Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other CLECs and ILECs offering service in Arizona. The Applicant has indicated to Staff that its proposed actual rates are comparable to the actual rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the fair value rate base information submitted by the Company, it did not accord that information substantial weight in its analysis.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

5 LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of that Local Exchange service are discussed below.

5.1 NUMBER PORTABILITY

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability

available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 QUALITY OF SERVICE

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

5.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. In this way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 SERVICE

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

5.6 CUSTOM LOCAL AREA SIGNALING SERVICES

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6 REVIEW OF COMPLAINT INFORMATION

The Commission's Consumer Services and Compliance sections have found Navigator to be in Good Standing with no reported complaints and in Compliance, respectively.

The Applicant states that it is authorized to provide local exchange service in Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

The Applicant certified that none of its officers, directors or partners has been involved in any civil or criminal investigations, formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten years.

7 COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

7.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

7.1.1 A Description Of The General Economic Conditions That Exist Which Makes The Relevant Market For The Service One That Is Competitive.

The local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a dominant position in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

7.1.2 The number of alternative providers of the service.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

7.1.3 The estimated market share held by each alternative provider of the service.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Most CLECs and local exchange resellers have a limited market share. Cox Telcom is the only CLEC believed to have captured significant market share in the Phoenix and Tucson metro areas.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and CLECs have also entered the market.
- b. One in which new entrants will be dependent upon ILECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. To interconnect.

- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market since new entrants do not have a long history with any customers.
- d. One in which Qwest provides a quality of service that has generated a significant number of complaints. These complaints led the Commission to adopt service quality rules that contain penalties if the service quality standards are not met. A provider of alternative service, such as the Applicant, should provide Qwest – as well as other providers – with the incentive to produce higher quality service including service installation and repair on a timely basis.
- e. One in which most customers have few, if any choices since there is generally only one or two providers of local exchange service in each service territory.
- f. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

8 ACCESS SERVICE SPECIFIC ISSUES

Access service includes Common Line, Switched Access, Optional Features & Functions and other Miscellaneous Service, as needed to provide the ability to enter or exit a local exchange network for the purposes of originating or terminating long distance communications. The Applicant is therefore engaged in providing telecommunications service for hire to the public, which fits the definition of a common carrier and a public service corporation. Staff believes the Commission has jurisdiction over the services to be provided by Navigator.

On January 11, 2007, Navigator submitted tariff A.C.C. Tariff No. 3 outlining the rates that will be charged for Access services. Staff has reviewed these rates and finds they are comparable to the rates of other Access service providers currently operating in the State of Arizona.

The Applicant would initially be providing service in areas where an incumbent local exchange carrier (“ILEC”), along with various competitive local exchange carriers (“CLECs”) and interexchange carriers are providing telephone and private line services. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

9 RECOMMENDATIONS

Staff recommends that Applicant’s application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-04315A-05-0365;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company that indicates its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other CLECs and ILECs offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. If at some future date, the Applicant wants to collect advances, deposits and/or prepayments from its resold local service customers, Staff recommends that the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the decision in this docket and must explain the applicant's plans for procuring its performance bond;
8. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
9. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated.
10. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall:
 - a. Procure a performance performance bond or the irrevocable sight draft Letter of Credit equal to \$125,000. The minimum performance bond or the irrevocable sight draft Letter of Credit amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the irrevocable sight draft Letter of Credit amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the performance bond or the irrevocable sight draft Letter of Credit amount.
 - b. Docket proof of the performance bond or the irrevocable sight draft Letter of Credit within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first. The performance bond or the irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission.

9.1 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.